

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
)
COUNTY OF MARION)**

**IEVA O. HARTWELL,
Complainant,**

**DOCKET NO. 04481
EEOC NO. TIN4-0086**

vs.

**INDIANA UNIVERSITY,
Respondent.**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Comes now Kenneth W. Maher, Hearing Officer for the Indiana Civil Rights Commission ("ICRC"), and enters his Recommended Findings of Fact, Conclusions of Law, and Order ("the recommended decision"), which recommended decision is in words and figures as follows:

(H.I.)

And comes now Complainant, Ieva O. Hartwell ("Hartwell"), by counsel, and files her Objections to Hearing Officer's Proposed Findings of Fact Conclusions of Law and Recommended Order, which Objections are in words and figures as follows:

(H.I.)

And comes now Respondent, Indiana University ("IU"), by counsel, and files Respondent's Response to Complainant's Objections to Hearing Officer's Proposed Findings of Fact, Conclusions of Law and Recommended Order, which Response is in words and figures as follows.

(H.I.)

A Hearing on Objections was held before ICRC on July 16, 1981, at which arguments were heard on behalf of Hartwell and IU relating to Hartwell's Objections. ICRC took the matter under advisement. On more than one occasion thereafter, ICRC voted on motions made its members with respect to what ruling should be issued. No motion ever received the required four (4) votes. [ICRC is an agency governed by the Administrative Adjudication Act, IC 4-22-1. IC 22-9-1-4(b). When such an agency consists of more than one person, a final order must be made by a majority thereof. IV 4-22-1-11. ICRC is composed of seven (7) members. IC 22-9-1-4(a).]

On October 21, 1981, a Notice of Second Hearing on Objections to be held on November 19, 1981 was issued. Hartwell, by counsel, moved for a continuance which motion was granted and the second hearing on objections was rescheduled for January 21, 1982 by Notice issued December 23, 1981.

On January 18, 1982, Hartwell filed the transcript(s) of proceedings held September 25, and 26, 1980 before Hearing Officer Maher and the transcript of the proceedings held before ICRC on July 16, 1981.

The Second Hearing on Objections was held before ICRC on January 21, 1982 and arguments were heard n behalf of Hartwell and IU relating to Hartwell's Objections.

And comes now ICRC, having considered the above and being duly advised in the premises, and finds and rules as follows:

1. Hartwell argues that ICRC should not adopt the recommended decision, in essence because more weight was given to some evidence than to other evidence in recommending the Findings of Fact and inferences therefrom contained in the recommended decision.
2. As between ICRC and the Hearing Officer, the latter is in a better position to determine the relative weight to give to testimony as only he has had any opportunity to observe the behavior of witnesses during their testimony.

IT IS, THEREFORE, ORDERED

1. Hartwell's Objections to Hearing Officer's Proposed Findings of Fact Conclusions of Law and Recommended Order should be, and the same hereby are, overruled.
2. ICRC hereby adopts as its own the Findings of Fact, Conclusions of Law, and Order recommended by the Hearing Officer in his recommended decision, a copy of which is attached hereto and incorporated by reference herein.

Dated: February 12, 1982

**THE INDIANA CIVIL RIGHTS COMMISSION
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**STATE OF INDIANA)
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**IEVA O. HARTWELL,
Complainant,**

**DOCKET NO. 04481
EEOC NO. TIN4-0086**

vs.

**INDIANA UNIVERSITY,
Respondent.**

RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

A hearing was conducted in the above cause on September 25, and 26, 1980. Complainant, Ieva O. Hartwell ("Hartwell"), was present and represented by counsel, Mr. Kenneth T. Roberts of the firm of Wilson, Coleman & Roberts of Indianapolis, Indiana. Respondent, Indiana University ("University"), was represented by counsel, Mr. Alvin R. York of the Office of University Counsel, Indiana University, Bloomington, Indiana.

Two witnesses, Robert Shriner and Thor T. Semler, were unavailable to testify at hearing. The parties agreed and the Hearing Officer approved that their depositions would be taken, published and admitted as evidence. As a result, citations to the record are made as follows: "TR" means transcript, "Shriner Dep." means Robert Schriner's Deposition, and "Semler Dep." means that Thor T. Semler's Deposition.

Having considered the evidence produced at hearing, the depositions of Robert Shriner and Thor T. Semler, and the arguments and post-hearing written submissions of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. This action was commenced on August 9, 1973, by the filing of a complaint alleging that University had committed an act of sex discrimination by hiring a male, Thor T. Semler, to replace Hartwell, a female, at a salary substantially higher than that paid Hartwell as of the date she resigned.
2. University is a body politic created by and existing under the laws of the State of Indiana, IC 29-12-2.
3. University denied liability, asserting that Semler was hired to replace two persons, not just Hartwell but also another employee, Richard Counts. Additionally, Semler was hired with responsibilities to arrange for providing added services and capabilities for the Aerospace Research Application Center ("ARAC"), in the form of technical assistance. ARAC was the department or operation in which Hartwell, Semler and Counts all worked.
4. ARAC is an information retrieval, dissemination and assistance center operated by Indiana University since 1963. It was funded by a five-year \$5,000.000 (\$5 million) contract between the National Aeronautics and Space Administration and Indiana University, by revenue received from customers and from University general fund money (TR 129). It maintained a staff of scientists and engineers and a computerized index of scientific and technical literature generated by the space program. ARAC was originally created to help the National Aeronautics Space Administration (NASA) find industrial uses for space research. Overtime, ARAC expanded its information resources beyond space science into a full range of modern industrial science and technology.
5. From its inception until 1973, ARAC provided industrial customers with computerized literature searches which were categorized as standard interest

profiles, and retrospective searches. Generally, standard interest profiles and custom interest profiles were periodic standardized subscription services routinely mailed to customers to update particular topic areas. The retrospective search was done on the request of a customer to secure all known information on a particular subject area. The end result was a booklet or publication containing abstracts of articles from scientific and technical journals when appropriate, the text of specific articles were included. A cover letter explaining the basis of the search was provided (TR 82, 90). On occasions, cover letters might inform the customer of other centers similar to ARAC which might respond to a request or put the customer in touch with a consultant in the University's Business School or at another center (TR 82, 90: Shriner Dep. 7). No revenue was received by ARAC for the referrals. No evaluation of the retrieved information was done by the ARAC staff (TR 82). During this period, no special reports were done for customers other than the computerized literature searches (TR 102, 145).

6. Until 1972, ARAC reported to a vice president of University it was not attached to any school within University (TR 7, 52, 333.) In January 1972, the High Education Commission of Indiana approved the creation of a School of Public and Environmental Affairs (SPEA) within University. SPEA conducts educational and public service programs: e.g. public administration, urban planning (TR 291), as well as academic degree programs. The Institute for Research in Public Safety, the Criminal Justice Planning Center and ARAC, all of which had been reporting to the central administration of University, were put under the umbrella of SPEA (RA 291, 337), which under the direction of Dean Charles Bonser.

7. In 1968, financial support provided by the NASA five-year contract diminished. NASA determined that customer revenue should take on a larger share of the funding of centers such as ARAC (TR 8, 210, 294, 295 359). ARAC attempted, unsuccessfully, to increase customer revenues. The budgetary situation of ARAC was critical by 1972 (TR 65, 75, 293). Dean Bonser did not know at the time he agreed to take the ARAC was in such severe financial straits

(TR 293). He did not know that ARAC had stopped conducting marketing and had reduced services about a year before entering SPEA and that ARAC was surviving from past sales revenues and a special state grant (TR 296). Dean Bonser became aware of the financial crisis about six months later in July 1972 (TR 293, 297).

8. When ARAC became a part of SPEA, in February-March 1972, it relocated its two separate offices into the SPEA facility at the Poplars Research and Conference Center (TR 213). The Director was Dr. Joseph DiSalvo. Richard Cunts was Associate Director, Hartwell was a Senior Scientist, Howard VanMeter was Shop Supervisor, and the Business Manager was James Buher, all of whom reported to the Director. No personnel changes were immediately made (TR 213), but on July 1, 1972, Counts was relieved of his title of Associate Director (Shriner Dep. 11-13; TR 215-217).

9. Robert Shriner was hired in the summer of 1972 as Director of Technology Applications in SPEA and Director of Operations of ARAC. On December 1, 1972, he was made Co-Director of ARAC. Shriner was made Director on July 1, 1973, a position held until 1976. His prior work experience was as a Research Associate in the Bureau of Business and Economic Research and as Associate Director of the Resource Development Internship Program, both in the IU School of Business, during the preceding two years while finishing his course work for a Ph.D. in economics and business administration, a degree received in 1973. From 1966 to 1969 he was the Director of the Wyoming Technical Assistance Program at the University of Wyoming. From 1962-1965 he worked for the General Dynamics Corporation in management and technical positions; while in the Air Force from 1958 until 1962 he was the supervisor of training for a B-52 bomber wing.

Shriner held a Masters Degree in economics and management from the University of Oklahoma, received in 1966. When hired at SPEA and ARAC in 1972, he had completed all course work for the Ph.D. in economics and business administration, which he received in 1973 (Shriner Dep. 4-5).

10. Joseph DiSalvo was the Director of ARAC from 1967 until July 1, 1973. As Director, he was responsible for the overall functioning of ARAC. He had a Ph.D. in chemistry and was a part-time faculty member in the Universities Department of Chemistry (TR 12). In the fall of 1972, DiSalvo moved his office to Gary, Indiana, because of personal problems related to a divorce situation, and became Co-Director of ARAC (Shriner Dep. 15). His primary responsibility was shifted to marketing ARAC products and services. On July 1, 1973, his title was changed to Director of Industrial Services.

11. Richard W. Counts was first employed at ARAC as a systems analyst in 1965. He became Manager of Information Systems in 1966, and was made associate Director of ARAC in 1966, a position he held until July 1972 (TR 129). In 1967 he received, also, an appointment in the University's Division of General and Technical Studies as Assistant Professor of Computer Technology (TR 171). He has published articles in the *Journal of Chemical Education, Research and Development* magazine and the *Journal of the American Society for Information Science* (TR 171). He holds a B.S. degree in physics and a M.S. degree in Physics (TR 128). On July 1, 1972, his title was changed to Senior Research Scientist. His employment with ARAC was terminated December 31, 1973.

Counts was responsible for the systems development, *i.e.*, changes in computer programs, development of new computer programs, supervised the programmers, on incidental occasions did some search conducted some marketing, was in routine contact with NASA officials, and worked closely with Hartwell on development – his being the design of the program and hers analyzing how it worked. While working closely with Hartwell he did not have the same duties and responsibilities as Hartwell. He had designed the basic retrieval system, *i.e.*, programs used by ARAC (TR 94-96, 219).

The work with ARAC was not full time. From 1967 forward he was the Supervisor of the Quantum Chemistry. On July 1, 1971, his salary was \$20,604 with 75% of \$15,453, paid by ARAC. He received no increase in salary on July 1, 1972.

12. Hartwell began work for ARAC as a staff chemist, part-time on April 20, 1969. She increased to full time on July 1, 1969. On July 1, 1970, she was given the title Senior Staff Chemist. On June 1, 1961, she replaced Dan Goodwin, Manager of Technical Operations, and was given the title of Senior Scientist. She was told that the title change was to give NASA the impression that the ARAC structure was not top heavy with management personnel. Of her own volition she resigned from employment with ARAC and University effective May 31, 1973. Her last day on the job was May 2, 1973.

13. Dean Bonser and Director Shriner discussed in the spring of 1973 the fact that ARAC operations were unsatisfactory. They concluded that a new thrust or something different had to be done to maintain the organization which was in dire financial shape and in bad shape from a personnel standpoint. Dean Bonser determined after investigation that a transfer technology agent (in which capacity ARAC sought to provide services to clients and customers) also should provide answers to the customer or client rather than simply providing the information gathered by literature searches, and that such expanded services would increase customer revenues (RS 304-307, 350).

Shriner also, at that time, was attempting to restructure ARAC without kicking anyone out or pre-announcing changes to the staff (Shriner Dep. 41; TR 303, 352; Resp. Ex. J. History P. 3).

14. Hartwell had told Shriner in late 1972 that she would be leaving ARAC in the spring of 1973 because she was pregnant (TR 205; Shriner Dep. 16). In February 1973, Hartwell had to tell both Shriner and Bonser she would definitely not return following the delivery of her child (TR 206, 233, 303-304; Shriner Dep. 17).

15. In the winter of 1972-73, Richard Counts told Shriner and Buher individually that he would become full time with the Quantum Chemistry Exchange Program in the summer of 1973 and would be leaving ARAC around July 1, 1973. Shriner announced the leaving in the June 1973. Newsletter to the ARAC Advisory Committee and staff (TR 176, 203, 206, 256-257, 324; Semler Dep. 37-39; Shriner Dep. 18, 63 and Dep. Ex. 11, 12 and 13: Resp. Ex. K).

16. With both Hartwell's and Counts' notices of departure in mind, Director Shriner had continuing discussion with both Dean Bonser and Buher, now SPEA Business Manager, regarding alternatives and options for the personnel changes. These considered the possibility of hiring a replacement for Counts, with Hartwell continuing to work part-time, if she would; replacing Counts and assigning Hartwell's work among existing employees; hiring one person to replace both Counts and Hartwell, with the capability to assume expanded responsibility for adding technical assistance (TR 206-209, 235, 351). Shriner decided to combine Hartwell's and Counts' jobs into a new position with expanded responsibility, despite the opposition of both Hartwell and Counts, with whom he had discussed the possibility (TR 234, 57-59, 97-98, 113). This position was titled Director of Technical Services.

17. In addition to financial problems, personnel problems existed at ARAC after it became a part of SPEA in early 1972. Director DiSalvo lost interest in continuing the office in Bloomington (TR 299), having remarried and relocated his home in the Chicago area. He wanted to move to Director's office to Chicago but Dean Bonser objected. However, Dean Bonser agreed to DiSalvo's moving to Gary Campus in the fall of 1972 after the Dean had hired Robert Shriner to run the day-to-day operation of ARAC at Bloomington. Once moved, DiSalvo's primary responsibility was marketing (RE 218-219, 298-300, 335). Additional tension was caused by Counts who had opposed the move of ARAC to SPEA, and was opposed to Dean Bonser and Robert Shriner as a Supervisor (Shriner's Dep. 17, 40-41, 63; Semler Dep. 32-33; TR 98, 163, 203-204, 294, 325, 333, 335. Further, Hartwell testified that both DiSalvo and Counts (during this time of financial crises) had individually told her that they were only going to give Shriner "minimum cooperation." This uncooperativeness took the form of withholding ideas and information (TR 115).

18. The search for Director of Technical Services began in late February and early March Of 1973, while Hartwell and Counts (both of whom had given notice they were leaving) were still employed in ARAC (TR 37-38; Shriner Dep. Ex. 2,3,5, 6 and 8). Contact was made by Ben Dulaski (Personnel Director of

SPEA), and Shriner with the American Chemical Society, with another center like ARAC in New Mexico, the Chemistry Department at the University and sources for retiring military personnel. These contacts were for the purpose of securing names of potential candidate (Shriner Dep. 26 and Dep. Ex. 5, 6, and 8). Some names were secured, and the individuals were sent letters by Dr. Maryon Ruckleman and Dr. John Droege. The letters described in some detail the kinds of qualifications sought and expressly stated that "In addition the person hired would be responsible for helping develop new capabilities and services..." (Shriner Dep. Ex. 5,8). There was no requirement that the person have a Ph.D. degree (Shriner Dep. 65) a broad kind of work experience was required (Shriner Dep. 67, 69-70).

19. Thor T. Semler applied by contacting Shriner by telephone and subsequently sending his resume to Shriner. This application was made after Semler learned of the position through a friend, Morgan Hunter, employed at SPEA. Upon receipt of Semler's resume, Shriner telephone and arranged an interview in April for the Monday following Easter of 1973 (Semler Dep. 5).

20. Dr. John Droege, R. Mayon Ruckleman and another were also interviewed in April 1973 (TR 41). No formal search committee existed, but Hartwell and Counts each interviewed candidates Semler and Droeger. Counts did not interview Ruckleman. Hartwell and Counts explained what they each did (Semler Dep. 22; TR 38, 131). The interview with Hartwell lasted about three quarters of an hour and she interrupted it to transact telephone business. The interview with Counts lasted about half an hour. Additionally, Shriner interviewed Semler for about two and one-half hours in the morning and briefly after lunch. Dean Bonser Briefly spoke with candidates Ruckleman and Semler (Shriner Dep. Ex. 2). Semler had some idea or understanding of ARAC and its function because the NASA Industrial Applications Center was located at NASA Lewis (Semler Dep. 21).

21. Ruckleman had been Shriner's first choice following the interviewing stage and had also been Bonser's preference (Shriner Dep. 55, Ex. 9). However, a check of her references brought mixed results. Semler's reference checks were

uniformly high (Shriner Ex. 3). Semler was offered the position on May 1, 1973, accepted on May 15, 1973, to begin the first week of June at the annual salary of \$17,750 (Shriner Dep. Ex. 2).

21. At the time of Semler's interview he had worked for about ten years at NASA's Lewis Research Center in Cleveland, Ohio, a facility with about 6500 employees (over 3000 Scientists, engineers and professionals). His responsibility had included monitoring research which NASA Lewis had contracted to universities; he evaluated proposals for work to be contract; sat on a committee assigned to solve problems in the efficient use of computers; managed the codes (data bases) available through the Argonne National Laboratories; maintained records and provided time estimates on the converting codes (data bases) to use on NASA Lewis computers and reprogrammed codes for this purpose. He also served on a four or five person committee which evaluated large prototype computers; did computer programming, including teaching it to fellow employees and designed codes where none existed; he had written numerous published articles on nuclear engineering. He was also called upon as a trouble shooter on projects which were not meeting deadlines (Shriner Dep. Ex 4: Shriner Dep. 7-13).

Prior to working for NASA Lewis, Semler was a system analyst for about a year at the Minneapolis Honeywell Corporation. He had taught computer programming at Cleveland State University and for several years had been a member of the Association for Computing Machinery, a national professional association that devotes its attention to computer programming, computer systems and computer hardware (Semler Dep. 18).

23. Semler's educational background included a B.S. degree in Physics from Purdue University in 1960, a year of full-time graduate work in physics at Purdue in 1960-61, a special three month intensive study program in nuclear physics, nuclear engineering, rocket propulsion (including metallurgy, aerodynamics and reactor physics) funded by the National Science Foundation, and full time graduate study in nuclear engineering at Purdue in 1967-68 on a fully paid sabbatical leave by his employer. The combination of graduate course work in

1960-61 and in 1967-68 was equivalent to the course work necessary for a Ph.D. in nuclear engineering. He was elected his junior year of undergraduate study to a scholastic honorary requiring a 5.5 on 6.0 grade scale and also in his freshman year had been in a scholastic honorary. He was an elected member of the American Nuclear Society.

Semler also had completed educational courses at NASA Lewis in management and costing and accounting as these subjects related to research projects (Shriner Dep. Ex. 4; Semler Dep. 13-18).

Hartwell's prior employment experience at the time she began work at ARAC was a year as a Research Assistant in a laboratory at the Imperial College University of London in 1966-67, and as an Abstractor for three months in the Summer Technical Program at the 3M Company in St. Paul, Minnesota in 1969. The one year work experience in England was not related to the kind of work done at ARAC (TR 89). She had some experience with science information systems but no prior work experience with data processing systems, computer programming, consulting, or other work in industry or government (TR 100-101).

25. As Senior Information Scientist, Hartwell replaced the Manager of Technical Operations (TR 19). She supervised engineers and scientists and had hiring, training and firing authority (TR 22, 28, 63). She was responsible for the quality, content and timeliness of ARAC services (TR 28) which were standardized literature searches (Shriner Dep. 38). She coordinated with the production staff and programming staff, setting advisory deadlines on work schedules (TR 28-29, 87). She assigned retrospective searches to the scientists and engineers and worked closely with the programmers in the completion of the development of the Chemical Abstract Condensates Tapes (TR 29) and the development of the Engineering Compendex (TR 60; Shriner Dep. 503). She developed a manual for use by graduate students in Chemistry which allowed them to access the Chemistry Abstract files, an ARAC service provided to the faculty in the Chemistry Department (TR 30).

She did some marketing of ARAC services. This work was done mostly by telephone or by travel to places close to Bloomington (TR 30, 61). She

traveled overnight on ARAC business only once or twice in the two years she was Senior Scientist, since she had negotiated with Director DiSalvo to keep travel to a minimum because of her family responsibilities (TR 30-31, 76-77). ARAC received no payment from the customers to have Hartwell visit. She was in contact with NASA representatives at only one meeting held in Bloomington and through a few telephone calls. These calls were not routinely made (TR 80). She participated in ARA staff meetings that resulted in ARAC policy, but she did not have any final decision-making authority concerning ARAC policy (TR 106). She wrote the section on technical applications contained in the 1962. Annual Report (TR 119). She did not do any special reports for companies which assessed their technology or problems and ARAC did not perform this function while she worked there (TR 102).

Hartwell supervised two computer programmers on a day-to-day basis (TR 78), although she had no hiring or firing authority (TR 78, 114-115), and she was not told by her supervisor, Shriner, that the programmers were to report to her (TR 86). She was not held accountable for the work of the programmers by the superior, Shriner (Shriner Dep. 49). Hartwell stated that the move and consolidation of the ARAC offices to the Poplars may possibly had accounted for the increased activity with the programmers whose offices are immediately across the hall from hers and that she had to deal with the programmers anyway as a part of the job (TR 116-117).

26. Daniel Goodwin, a male, was Hartwell's predecessor in the management position. The title, while Goodwin filled it, was Manager of Technical Operations (TR 19). When Goodwin left ARAC, then Director DiSalvo changed the position title because he did not want NASA, the contracting federal agency, to think ARAC was overloaded with managers. Goodwin was hired in February 1969, on a seventy five percent basis (TR 198), and on July 1, 1969, increased to full time. He supervised 20 scientists and engineers; traveled overnight in a marketing

function an average of two or three nights per month, and generally had done the same things as Hartwell. The engineering staff dwindled over the time he was at ARAC to the low teens by the time he left.

Goodwin had an undergraduate engineering degree and a few months work in industry (TR 202).

27. Hartwell' entry level salary in the management position on June 1, 1971, was \$10,920.00. The salary was raised to \$12,300 on month later on July 1, 1971. This shift in salary one month later was because it was easier to make the salary change at the time the fiscal year changed (TR 110). Hartwell received an increase to \$12,900 on January 1, 1972, and an increase to \$13,100 in May 1973.

28. Goodwins entry level salary in the management positions was \$10,400. Because he worked 75% time, it actually was \$7,800 on an annual basis. Six months later on July 1, 1969, Goodwin went to full time status at a salary of \$11,700. On July 1, 1970, his salary was increased to \$12,840, which was his terminal salary when he left effective May 25, 1971 (TR 198-199).

29. At all times, based on comparable length of service in the management position, Hartwell was paid more than her male predecessor, although she supervised fewer employees than her predecessor and did not travel on overnight marketing trips as had her predecessor (TR 277).

30. Beginning after Hartwell had departed, Semler, holding the title of Director of Technical Services, supervised about 14 full time and part time engineers and scientists and the computer staff (Semler Dep. 23; Shriner Dep. 42). For the time that Counts remained on the payroll, Semler was his superior (Semler Dep. 23; Shriner Dep. 63). Semler assigned searched to the staff and did searches himself (Semler Dep. 23, 43), Semler was responsible for maintaining the computer systems and in exercising this responsibility went to the computer center to pick up material and discuss any problems or other mattes with the computer systems personnel (TR 23, 27, 43), performed programming corrections (TR 26, and was overseer on the computer software development for the Naval Ordinance Technical Assistance Project (TR 27). He sat ex officio on

the IU Computer Committee which discussed problems with accessing the system (TR 26).

In the first few months Semler evaluated the services offered by ARAC in terms of his background experience to determine whether these met industry needs. He found they did not (Semler Dep. 24).

31. Semler traveled extensively conducting marketing problem definition and evaluation and quality control (Semler Dep. 23, 37, 43; Shriner Dep. 37). After Semler was hired, ARAC went after larger assignments. Semler assisted in the development and implementation of the technical assistance service which had not been provided by ARAC before his arrival (Semler Dep. 49-50; TR 102).

On these larger technical assistance projects ARAC billed the clients at the rate of \$250 per day for Semler's on-site visits (Semler Dep. 27; Shriner Dep. 36). Semler's visits included such places as Presque Isle, Maine, to observe a problem with a water aerator, and then to the customers plant; Duncan Electric in Lafayette, Indiana, to observe a STET production line problem; to NASA Lewis Research Center to collect information for a customer; a firm in Tulsa, Oklahoma, to observe work on a clinical electronic thermometer; to Kokomo, Indiana, to observe problems in ceramic sanitary ware production; to the Louisville, Kentucky, newspaper the *Journal Courier* (sic) to observe problems with the presses, and to Frankfort, Kentucky, to view problems with plastic buildup at a paper processing plant.

He wrote proposals for technical assistance projects which on the larger project involved detailed costs estimates. Generally the proposal provided a statement of ARAC's understanding of the problem, an introduction to the problem, the manner in which the work would be performed and the cost of doing this work. The proposal served as the contract if accepted by the customer. Once the contract was accepted, Semler was responsible for managing the project to completion and for ensuring the report was delivered in a timely fashion (Semler Dep. 43). These projects brought substantially more money than the retrospective searches which had ranged between \$85 and \$300 prior to his arrival.

He personally wrote three technical assistance proposals in his first year at ARAC. These contracts for ARAC assistance were with the Ball Corporation for \$5,000, the Smith Corona Merchants Corporation for \$7,000-\$10,000, and a Naval Ordinance project for \$7,000 to \$10,000 (TR 30).

At the conclusion of the work the customer received a report much like an engineering report or consulting report, written by Semler and other staff members at ARAC. The reports ranged from a few to several hundred bound pages (Semler Dep. 29; Shriner Dep. 36). These reports were supported by abstracts and, in some cases, required laboratory work by the engineers and scientists (Semler Dep. 28; Shriner Dep. 38), and which sometimes involved the manual search of information material (Semler Dep. 45), provided answers and recommendations instead of abstracts.

32. Semler was involved in promotional work to change the identity of ARAC so clients and customers would think of the broader activity of ARAC which was based upon the theme answers, not just abstracts (Shriner Dep. 37; Semler Dep. 45). He worked on promotional brochures as well (Semler Dep. 44).

33. Semler was in contact with the NASA Office of Technology Utilization, the NASA field offices and people with whom he had contact while working at NASA Lewis Research Center (Semler Dep. 45).

34. Semler provided a broader capability, a new perspective needed for technical assistance (Shriner Dep. 19-20; TR 319), participated in and was held accountable for the technical staff side of ARAC and for the computer systems side of ARAC, as well as for developing the technical assistance services which ARAC had not before offered (TR 61, 62, 94, 97, 117, 215). Semler had broad experience while at NASA Lewis in monitoring contract work problem solving on projects and dealing with private industry engaged as government contractors. Hartwell did not have this broad background experience elsewhere that Semler had. Except for a three month summer intern position, her only prior work experience was limited to ARAC and its information retrieval programs (Shriner Dep. 65).

35. ARAC's financial position improved after Semler was hired and the new direction of technical assistance was taken. In 1974 ARAC's orders for technical assistance alone exceeded the 1973 earnings for all industrial services (76,000 vs. 75,000). (TR 316), and were five times greater than 1973 earnings for technical assistance and retrospective searches (Respondent's Exs. L-V). Overall earnings from (customer) industrial services increased (Respondent's Ex. V). ARAC improved its financial position to the point it could survive in the long run, a position it had not been in when it became a part of the School of Public and Environment Affairs (TR 316, 333, 336).

36. Evidence favorable to Hartwell included a letter dated March 1, 1973, to Mr. William Schinnick from Robert Shriner (Complainant's Ex. 10), which stated "...Dr. Ieva Hartwell will be leaving us on May 1. We are therefore seeking someone to replace her as the head of our technical services and analysis group." Subsequent communications of March 21, 1973, to Dr. John Droege (Complainant's EX. 11) and to Dr. Maryon Ruckleman (Shriner's Dep. Ex. 8) are more detailed. These letters included the responsibility for supervision of programmers as well as scientist and engineers; seek someone with research and development or consulting experience, and "strongly desire" a person with "knowledge of science information systems, data processing systems and computer programming", and several years work experience in industry or government.

37. The letter states that the Director of Technical Services will be responsible for helping develop new capabilities and services for ARAC. The letters to Droege and Ruckleman seek someone with knowledge and credentials like Richard Counts in the data processing systems and computer programming, as well as someone to undertake responsibilities held by neither Hartwell nor Counts. Viewed as a part of the overall evidence in this case, the March 1, 1973, letter from Shriner to Shinnick can be viewed only as an advertisement or recruiting device to secure names of applicants.

38. Semler was informed in April at his interview that he would be taking over the responsibilities of two individuals (Semler Dep. 21, 46, 47). Hartwell confirms

that she discussed the combined job with Shriner in February and April of 1973 (TR 59, 112) but was not informed of Shriner's idea on the matter (TR 113); had discussed Counts leaving with Shriner (TR 98), and had no personal knowledge of whether the jobs were combined (TR 59).

39 The organization chart in May 1973, contained in the ARAC Briefing Packet (Respondent's Ex. J, P. 12) and prepared before Semler's arrival, had dropped Counts from any management position. Broad technical assistance rather than literature searches were highlighted (Respondent's Ex. J, P. 11). No biographical data on the management personnel is included for Counts, as is included on the other managers (Respondent's Ex. J, P. 39).

40. Hartwell points to the Respondent's Personnel Action Form for Thor T. Semler in support of her position that Semler was to replace only her.

Two points are made by Hartwell. The position number on the form is the same and that it states "Replaces Ieva Hartwell." Uncontradicted evidence concerning the position number is that it bears no relationship to the duties and responsibilities of the employee who is assigned the number. It is a number used for payroll purposes only (TR 238, 239, 221, 224; Shriner Dep. 60-61). The number does not control the title of the position found on the PAF. The second point is that the PAF form was returned to SPEA without approval at a highest administrative level. SPEA was asked why Semler was being paid at a salary in excess of that of Hartwell (TR 327-328; Complainant's Ex. 5). An explanation was given by James Buher to Dean Kramer and PAF was processed at the higher level without further inquiry (TR 225, 327, 328). The fact that management questions about a situation that could be sex discrimination does not establish that sex discrimination occurred.

41. Hartwell offered the testimony of Richard Counts in support of the position that he had been pressured to leave because Hartwell had filed her "lawsuit" (TR 137, 140, 156), and Shriner unilaterally announced his leaving (TR 162). Counts contends that the jobs were never combined (TR 136-137) and that it was a ruse developed by Shriner to defend the case after Hartwell filed her complaint (TR 168).

42. The record, however, shows that Counts had planned to leave ARAC and that Shriner and Semler wanted him to commit to a date of leaving prior to the time when the University first received notice that Hartwell had filed a complaint.

43. From the evidence presented, the Hearing Officer finds that Semler was not hired to perform the same duties at Hartwell, but was instead hired to perform those duties and additional duties requiring additional skill and placing more responsibility upon the restructured position.

44. The difference between the salaries of Hartwell and Semler existed because of the additional duties and the resulting additional skill required and responsibility of the position and not because of sex.

45. The evidence fails to establish that the restructuring of the position was done because of sex.

46. Because of the absence of a discriminatory practice, Hartwell suffered no damages cognizable by the Indiana Civil Rights Law, IC 22-9-1.

47. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby incorporated as such.

CONCLUSIONS OF LAW

1. The University is a "person" as that term is defined in IC 22-9-1-3(a) and an "employer" as that term is defined in IC 22-9-1-3(h).

2. The Complaint was timely filed because Hartwell Received pay, which was alleged to be less than that received by Semler because of sex, within ninety (90) days prior to the filing of the complaint. See IC 22-9-1-3(o).

3. The Commission has jurisdiction over the parties and the subject matter of this cause.

4. The University did not engage in a "discriminatory practice" as that term is defined in IC 22-9-1-3(1) when it paid Semler (a male) at a higher rate than Hartwell (a female) because of additional duties and the additional duties and the additional skill required and responsibility of the position and not because of sex.

5. It cannot be concluded that the University engaged in a “discriminatory practice” by restructuring Hartwell’s position upon her leaving when the evidence fails to establish that the restructuring was done because of sex.
6. When, upon all the evidence, the Commission finds that a person has not engaged in a discriminatory practice it should issue an order dismissing the complaint. IC 22-9-1-6(k)(3).
7. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby incorporated as such.

ORDER

The complaint of Complainant, Ieva Hartwell, shall be dismissed for the reasons aforestated.

Dated: March 25, 1981